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April 30, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., SW
Counter TW-A325
Washington, D.C. 20554

Re: CC Docket No. 96-115, Subscriber List Information

Dear Ms. Salas:

As the Commission considers adopting rules to implement Section 222(e)'s requirements mandating access to subscriber list information, INFONXX urges the Commission to adopt express rules and language as set forth below.

Interpretation of "publishing directories in any format"

The Commission should adopt a rule along the following lines:

For purposes of these rules, any person who disseminates or provides subscriber list information, whether such provision or dissemination is done electronically, orally, or by means of a written publication, and whether the information is provided collectively or individually, shall be deemed to be a person who publishes directories in any format.

This interpretation gives full meaning to the broad term used by Congress -- "in any format." One such format that is most familiar is a written publication containing subscriber listing information. But as Congress recognized elsewhere in the 1996 Act, there are other means of publishing. In Section 274, Congress defined "electronic publishing" to mean the "dissemination, provision, publication or sale" of information by electronic means. That formulation ("disseminate or provide information") provides a useful elucidation of "publish" (and one consistent with standard dictionary definitions and common law). Section 222(e) goes further, however, and applies the definition of "publish" to directories "in any format." This language indicates that Congress clearly meant to encompass all means of publishing directories. Accordingly, the Commission should determine that oral dissemination of SLI by directory assistance providers is a form, or format, of disseminating or providing information.¹ To

¹ Indeed, application of voice-recognition technology to a personal computer searching directory assistance sites on the Internet may well make an electronic publishing inquiry of a SLI database and an oral inquiry indistinguishable.

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conclude otherwise would be to prejudice one means of information dissemination over another, and that would not give full effect to the broad mandate of the statutory language.

Interpretation of "nondiscriminatory and reasonable rates, terms, and conditions"

Section 222(e) requires a carrier to provide to certain persons SLI on "nondiscriminatory and reasonable rates, terms, and conditions" In determining whether a carrier has met its statutory mandate to offer SLI at nondiscriminatory rates, this inquiry cannot occur in a vacuum, but rather must have an appropriate point of reference to compare whether the rates being offered are discriminatory. Years of enforcing Title II's requirement of nondiscriminatory and reasonable rates teaches that the inquiry must center on the rates at which SLI is made available to providers of a comparable service. The Commission must recognize that there are different elements of the directory business, and that each element has its own cost and rate structure. Accordingly, any inquiry on whether a particular rate for SLI is nondiscriminatory must focus on the rates at which such information is made available to other persons who provide a similar service. *For instance, the appropriate point of comparison on nondiscrimination for a person who publishes directories by means of oral dissemination, i.e., a directory assistance provider, should be the rates, terms and conditions at which other persons who provide such information orally (such as an I-LEC or a C-LEC or other DA provider) obtain that information, by means of interconnection agreements or other means.*

The Commission is not inclined, at this time, to prescribe a specific national rate for such offerings. Nonetheless, the Commission must enforce the right of DA providers to gain access to SLI at the same rates, terms, and conditions that it is provided in interconnection agreements, statement of available terms and conditions, or tariffs accepted in an individual state. *These arrangements provide an appropriate benchmark of nondiscriminatory access, as they generally require that the incumbent local exchange carrier make the SLI available under the same rates, terms, and conditions that it provides such information to itself (e.g., the frequency and timeliness of updates, the accuracy of the database, the status of unpublished listings).* In determining whether an offering is nondiscriminatory, a person seeking access to SLI pursuant to this section should be able to select the rates and terms from the various interconnection agreements or tariffs that SLI is being offered to other persons. This approach will enable the Commission and the States to implement Section 222(e)'s mandate of equal access so as to promote competition in each sector of the publishing business as expeditiously as possible – i.e., without requiring the prescription of national rates at this time.

These issues are ripe for decision.

The Commission should address these issues at this time because they are a logical extension of the rules proposed in the *Notice*, and therefore satisfy the Administrative Procedure Act ("APA") requirement of notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved."² As the Commission recognizes, the APA "does

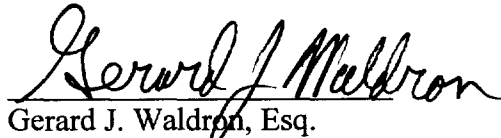
² 5 U.S.C. § 553(b)(3).

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not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule.”³ Rather, notice is sufficient if the final rules are a “logical outgrowth” of the rulemaking proposal.⁴ The issues raised herein are a logical outgrowth of the underlying proposals outlined in the *Notice*. As the *Notice* expressly states, the Commission initiated this proceeding to “interpret and specify in more detail a telecommunications carrier’s obligations under subsections 222(c)-(f) of the 1996 Act.”⁵ Section 222(e), as the *Notice* articulates, requires a telecommunications carrier “that provides telephone exchange services” to provide “subscriber list information . . . to any person upon request for the purpose of publishing directories in any format.”⁶ In considering the obligations of telecommunications carriers under this mandate, the *Notice* specifically requested comment on the safeguards required to ensure that “a person seeking subscriber list information is doing so for the specified purpose of ‘publishing directories in any format.’”⁷ Whether a person who makes available directories through live operators is “publishing directories in any format,” and therefore able to take advantage of Section 222(e), is directly related to this determination. Thus, it is consistent with the underlying purpose of the *Notice*, and appropriate under the APA, for the Commission to address these issues.

If there are any questions, please contact the undersigned.

Sincerely,



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April 30, 1999

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³ *In re Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, 12 FCC Rcd 13942, 13959 (1997).

⁴ *Id.* (quoting *United Steelworkers v. Marshall*, 647 F.2d 1189, 1221 (D.C. Cir. 1980)). See also *Aeronautical Radio, Inc. v. Federal Communications Commission*, 928 F.2d 428, 445-46 (D.C. Cir. 1991).

⁵ *Notice*, ¶ 2.

⁶ *Id.*, ¶¶ 12, 43.

⁷ *Id.*, ¶ 46.

CERTIFICATE OF SERVICE

On April 30, 1999, a copy of these comments were
delivered by hand to the following persons:

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